

SUPREME COURT OF INDIA

IA Nos. 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2966-2967 in 1287 in WP(C) No. 202 of 1995. Judgment dated 13th February, 2012. Reported in 2012 (4) SCC 362, 2012 (4) MLJ 137, 2012 (4) LW 777

THE HONOURABLE MR. JUSTICE K.S. RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE
CHANDRAMAULI KR. PRASAD

T.N. Godavarman Thirumulpad Versus Union of India & Others

Judgment :-

K.S. Radhakrishnan, J.

We are in this case concerned with the question whether sandalwood (*Santalum album* Linn) stated to be an endangered species, be declared as a "specified plant" within the meaning of Section 2(27), and be included in the Schedule VI of The Wild Life (Protection) Act, 1972 (for short the Act). On going through the various international conventions, we thought it appropriate to examine the repeated requests made by the state of Andhra Pradesh to the Central Govt. to notify Red Sanders (*Pterocarpus santalinus*) as a 'specified plant' and be included in the Schedule VI of the Act.

2. A non-governmental organisation moved the Central Empowered Committee (CEC) to initiate steps for closure of all unlicensed sandalwood oil industries, particularly in the State of Kerala. CEC after conducting a detailed enquiry and hearing the state officials, representatives of the sandalwood industries and various other interested persons, submitted its report dated 24th February 2005 before this Court praying that all unlicensed sandalwood oil industries be also brought within the purview of this Court's order dated 30.12.2002 by which this Court had ordered the closure of all unlicensed saw mills, veneer and plywood industries in the country. Various other directions were also sought for. Report of the CEC was listed along with IA 1287 of 1995 which came up for hearing on 1.4.2005 and this Court issued notices to the States of Kerala, Karnataka, Tamil Nadu, Andhra Pradesh, which are the major sandalwood growing states of the country. This Court then passed an order on 10.2.2006 directing closure of all the unlicensed sandalwood oil extracting factories, operating in various parts of the country. Consequently, 24 unlicensed sandalwood oil factories functioning in the State of Kerala were closed down.

3. The State of Kerala and few other states submitted their reply to the reports submitted by the CEC and pointed out that no private sandalwood oil extracting units are now functioning in most of the sandalwood growing states but only the state owned public sector undertakings. The Karnataka Soaps and Detergent Ltd., a Karnataka State owned undertaking also submitted their views. MoEF also filed a detailed affidavit before this Court stating that they have no objection in the closure of all unlicensed sandalwood oil manufacturing factories in the country.

4. Indian Sandalwood Association got themselves impleaded and filed objections to the CEC Report. CEC later submitted three other reports dated 8.1.2008, 2.9.2009, 15.11.2010. CEC in the reports took the stand that the sandalwood oil industries could be permitted to function outside the sandalwood growing states and that import of sandalwood as such should not be banned. The Additional Principal Chief Conservator of Forests, Karnataka also submitted before the CEC that there are no matured sandalwood trees available in the State of Karnataka and the State has not approved any felling of sandalwood trees due to non-availability. State of Tamil Nadu also stated before the CEC that no felling of sandalwood tree was officially undertaken due to want of matured trees. State of Maharashtra and Andhra Pradesh have also filed affidavits stating that whatever little sandalwood growth was there in those states needs to be protected and that sandalwood species is under imminent threat. MoEF in its affidavit dated 24th October, 2010 has stated as follows:

"The Ministry supports the contention that all illegal sandalwood oil units should be closed down. As far as closing of sandalwood units in non-sandalwood growing states is concerned the Ministry has "No Objection" in allowing the legal private entrepreneur from setting up sandalwood oil units in non-sandalwood producing states provided that only legally sourced sandalwood for which Certificate of Origin has been obtained, is used and the regulatory enforcement mechanisms, set up by the state for detection, control and action against proceedings of illegal units are well in place."

The CEC, however, in its report dated 2.9.2009 maintained the following stand:

"In the light of the facts highlighted above the CEC is unable to agree with the contention of the Applicants that they should be permitted to establish/continue the sandalwood oil units in non-sandalwood producing states under appropriate supervision and regulations and that the imported sandalwood is a substitute for indian sandalwood. The CEC is of the considered view that if the present state of affairs is allowed to continue, sandalwood, so unique and a special gift of nature to India would become extinct in the not too distant future. The protection of sandalwood forest is

simply not possible without first ensuring that the establishment / functioning of sandalwood oil units are severely restricted / regulated in the country particularly when the sandalwood has become an almost extinct commodity. One is duty bound to protect in public interest whatever sandalwood forests are left. This is one instance where the public interest necessarily and unhesitatingly has to take precedence over private interest. However, sandalwood oil units, based exclusively on imported sandalwood may be permitted in identified locations subject to strict supervision and regulations by the Forest Department.

5. MoEF however in its affidavit dated 24.3.2011 stated that in the light of the non-availability of sandalwood, it would review its policy about permitting the export of sandalwood chips and oil, particularly, with reference to its adverse effect on the production of sandalwood in the country and also would examine the imposition of complete ban on sale/auction of confiscated sandalwood in view of the alarming rate at which sandalwood is disappearing and may become extinct in not too distant future.

6. MoEF however in its latest affidavit dated 6.9.2011 expressed the apprehension that the inclusion of the sandalwood species in Schedule VI in the Wild Life Protection Act, 1972 would alienate people from growing the species on a large scale and hence it is of the view that an "All India Sandalwood Legislation" would be an adequate solution, in the event of which it was stated the species would be fully protected within the country and at the same time trade could also be regulated. Ministry has also expressed the view that sandalwood may be allotted to public sector units and that would ensure that the artisans dealing with sandalwood would get raw materials which would give them a greater impetus for taking up their traditional work/skills and also give them an economic boost as well as earn foreign revenue as sandalwood handicrafts have high demand for export.

7. The Sandalwood Oil Manufacturers Association expressed the apprehension that the inclusion of the sandalwood as a specified plant under the Act would not be conducive and beneficial for the cultivation and preservation of the trees. Reference was also made to the various provisions of Chapter IIIA of the Act and stated that the members of the Association who have cultivation of sandalwood in the State of Chhattisgarh, Madhya Pradesh and involved in the business of manufacturing products using sandalwood oil if covered by Section 17A(b) would be put to considerable difficulties. The Association also maintained the stand that if Chapter IIIA of the Act is fully implemented by declaring the sandalwood as a specified plant then it would adversely affect the interest of the cultivators of sandalwood and would lead to further extinction of the species.

8. We have heard the learned amicus curiae, Mr. P.S. Narasimha, Senior Counsel Mr. Rajiv dutta, and other counsels at length. Learned amicus curiae referred to the affidavits filed by the MoEF and other state governments and submitted that there is consensus among all major sandalwood growing states and the Union of India that the export of sandalwood would be of serious threat and may lead to the extinction of the species. Few of the states have maintained the stand that no matured sandalwood trees are available for felling which, according to the amicus curiae leads to the inescapable conclusion that indian sandalwood is in fact endangered. Learned senior counsel highlighted the necessity of the inclusion of sandalwood in Schedule VI of the Act and submitted that the apprehension expressed by the MoEF that it would discourage the cultivation of sandalwood has no basis. Learned senior counsel extensively referred to the provisions of Chapter IIIA of Act and the provisions of Bio Diversity Act, and submitted that when we deal with the issue of an endangered species, the question to be examined is not whether the species is of any instrumental value to human beings, but its intrinsic worth. Learned senior counsel extensively referred to the anthropocentric and ecocentric approach and submitted that anthropocentric approach would depend upon the instrumental value of life forms to human beings while ecocentric approach stresses on the intrinsic value of all life forms. Learned senior counsel stressed that the bio-diversity law departs from the traditional anthropocentric character of environmental law and that our Constitution recognises ecocentric approach by obliging every citizen to have compassion for all living creatures, so also the preamble to Act. Learned counsel also submitted that public trust doctrine developed in **M.C. Mehta v. Kamalnath** 1997 (1) SCC 388 is based largely on anthropocentric principles and the precautionary and polluter-pay principle affirmed by this Court in **Vellore Citizens Welfare Forum v. Union of India and others** 1996 (5) SCC 647 are also rooted in anthropocentric principle, since they too depend on harm to humans as a pre-requisite for invocation of those principles.

9. Learned senior counsel also highlighted the principle of sustainable development and inter-generational equity and stated that they too pre-suppose the higher needs of human beings and lays down that exploitation of natural resources must be equitably distributed between the present and future generation. Learned senior counsel also highlighted that the above principle would be of no assistance when a Court is called upon to decide as to when a species has become endangered, or the need to protect irrespective of its instrumental value. Learned senior counsel pointed out the CEC and the States of Tamil Nadu and Kerala have produced enough materials to show that the sandalwood trees are critically endangered and that illegal felling and trade go on unabated and regulation on cultivation and use of sandalwood would definitely be in public interest

and therefore constitutional. Further it was also pointed out that Chapter IIIA altogether does not prohibit or abolish either the cultivation, possession or dealing in specified plants, but it merely regulates the cultivation and use of specified plants through a licensing system of the Chief Wildlife Warden. He therefore urged that this Court must interpret Chapter IIIA along with the constitutional provisions and international obligations in a holistic manner to ensure that the Central Government is duty bound to protect sandalwood by including the same in Schedule VI of the Act.

10. Learned senior counsel, Shri Rajiv Dutta also offered his suggestion/comments on the question of notifying sandalwood as a specified plant under Schedule VI of the Act. The apprehension voiced by learned senior counsel was that on such inclusion there would be blanket restrictions and conditions covering big and small private cultivators, to farmers, to menial vendors and hawkers who possess sandalwood and/or any part of and/or any derivative of sandalwood in any product that uses a part of or derivative of sandalwood. Learned senior counsel also pointed that they have no objection in the prohibition of picking and uprooting sandalwood tree from forest area or any area specified by notification by the Central Government but they are more concerned with the applicability of Section 17A(b). Further it was pointed that once it is notified as a specified plant, Section 17B would be attracted that would only discourage the trade leading to the stoppage of many of the sandalwood oil industries in the country. Learned senior counsel also referred to Sections 17C, 17D, 17E, 17F and other relevant provisions and highlighted the difficulties that they would experience if sandalwood is declared as a specified plant. Learned senior counsel also pointed out that they have no objection in imposing proper regulation in the trade of sandalwood and all India legislation is a better option.

11. We have heard the arguments of learned senior counsel appearing on either sides and perused the affidavits filed by various state governments, MoEF and the reports of the CEC and other relevant materials. Sandalwood is an evergreen tree which generally grows in the dry, deciduous forests of the Deccan Plateau. Sandalwood is also mentioned in one of the oldest epics, the Ramayana. Descriptions are also made by Kalidasa of its use in his literary works as well. In short, it is part of Indian culture and heritage and its fragrance has spread not only in India but also abroad and its rich oil content led to its large scale exploitation as well. Exploitation of this rare endangered species went on unabatedly, especially in the southern states of India and on intervention of this Court, the State of Kerala has closed down 24 unlicensed sandalwood oil factories. Similar steps were being taken by other states as well. Before we refer to various contentions raised by counsel on either sides, we will refer to some of the legislative measures taken by some of the states, which are as under.

State of Kerala:

12. In State of Kerala best quality sandalwood trees are grown in the forest of Marayoor, spread over 93 Sq. Km which generate the best quality sandalwood oil in the world. Recently, the Kerala Forest (Amendment) Act, 2010 introduced a new chapter, Chapter 6A entitled "Provisions relating to sandalwood" which regulates cutting and possession of sandalwood. Section 47A provides that no individual shall cut, uproot, remove or sell any sandalwood tree without previous permission in writing from the forest officer. There is also absolute prohibition on transport and possession of sandalwood or sandalwood oil in excess of one Kilogram or 100 ml respectively without a license from the forest officer under Section 47C of the Act. Under Section 47C(3) only the government or the public sector undertakings (PSU) owned by the government shall manufacture or distil, refine or sell sandalwood oil. Section 47F imposes restrictions on purchase and sale of sandalwood from any person other than government or authorised officer. Provision is also there for seizure of sandalwood and its oil under Section 47H and penalty for offences can be imposed. Act also provides for imprisonment for three years, extendable upto seven years and fine not less than Rs.10,000/- extendable upto Rs.25,000/-.

State of Tamil Nadu

13. Tamil Nadu Forest Act, 1882 -- Section 40G of the Act provides that teak, blackwood, ebony, sandalwood and also ivory and teeth of elephants, either grown or found on government land or private property are royalties and no trade shall be carried on in them unless they have been duly obtained from the government. Section 40G(2) places restrictions on felling of trees by any person without the permission of the Chief Conservator of Forest or any other person authorised by him. The state of Tamil Nadu has also enacted the Tamil Nadu Sandalwood Possession Rules, 1970 and also Tamil Nadu Sandalwood Transit Rules, 1967, and the Act also provides for imposing penalties and imprisonment.

State of Karnataka

14. Karnataka Forest Act, 1963 and the Rules made thereunder have removed the restrictions on growing sandalwood trees in private lands. Section 83 of the Act provides that where a person is an owner of sandalwood trees before the commencement of 2001 Amendment Act, he shall not fell or sell such sandalwood tree or convert or dress sandalwood obtained from such tree or possess or

store or transport or sell the sandalwood except in accordance with the provisions of the Act. The Act also provides for imposition of penalty and imprisonment. **State of Andhra Pradesh**

15. A.P. Forest Act, 1967, A.P. Sandalwood Possession Rules, 1969, A.P. Sandalwood and Red Sanderswood Transit Rules, 1969 generally deal with the possession, control and transit of sandalwood and Red Sanders etc., but there is no restriction as such on the felling of sandalwood trees. The Act also provides for punishment for contravention of the provisions of the Act or the rules made thereunder.

16. State of Maharashtra has also enacted the Felling of Trees (Regulation) Act, 1964, The Bombay Forest Rules 1942, which deal with sandalwood as well. State of Madhya Pradesh has also enacted Madhya Pradesh Revenue Code. States like Gujarat, Orissa have framed special provisions for dealing with sandalwood. It is unnecessary to refer to the laws made by the various states in the country, suffice to say lack of uniform legislation, dealing with this endangered species, is clearly felt.

17. Article 48A of the Constitution introduced by the Constitution (42nd Amendment) Act 1976 states that the State shall endeavour to protect and improve the environment and safeguard the forest and wild life of the country. Article 51A(g) states that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. By the same constitutional amendment Entry 17A "forest" and 17B "protection of wild animals and birds" were included in List III - Concurrent List so that the Parliament as well as the States can enact laws to give effect to the Directive Principles of State Policy as well as various international obligations. Earlier, by virtue of Entry 20 of the State List VII Schedule to the Constitution, namely protection of wild animals and birds, only the State had the power to legislate and Parliament had no power to make law in this regard applicable to the State unless the legislatures of the or more states passed a resolution in pursuance of Article 252 of the Constitution empowering the Parliament to pass necessary legislations on the subject. However, by virtue of (42nd Amendment) Act 1976 of the Constitution, the Parliament has got the power to legislate for the whole country. Consequently, The Wildlife (Protection Act) 1972 was enacted by the Parliament to provide for the protection to wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensure the ecological and environmental security of the country. The Act was later amended and Chapter-III A was inserted by Act 44 of 1991 enacting provisions for the protection of "specified plants".

18. Biological Diversity Act, 2002 was also enacted by the Parliament with the object of conserving biological diversity, sustainable use of its components and for fair and equitable sharing of the benefits arising out of utilization of genetic resources. Biological diversity includes all the organisms found on our planet viz., the plants, animals and micro organisms. Environmental Protection Act, 1986 enacted by the Parliament empowers the Central Government under Section 3 to take such measures for the purpose of protecting and improving the quality of environment. When we examine all those legislations in the light of the constitutional provisions and various international conventions like Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES), the Convention of Biological Diversity 1992 (CBD) evidently, there is a shift from environmental rights to ecological rights, though gradual but substantial. Earlier, the Rio Declaration on Earth Summit asserted the claim "human beings are the centre of concern". U.N. Conference on Environment and Development (UNCED-1992), was also based on anthropocentric ethics, same was the situation in respect of many such international conventions, that followed.

19. The public trust doctrine developed in **M.C. Mehta vs. Kamalnath** (1997) 1 SCC 388, is also meant to ensure that all humans have equitable access to natural resources treating all natural resources as property and not life. That principle also has its roots in anthropocentric principle. Precautionary principle and polluter-pays principles affirmed by our Court in **Vellore Citizens Welfare Forum vs. Union of India and Others** (supra) are also based on anthropocentric principle since they also depend on harm to humans as a pre-requisite for invoking those principles. The principle of sustainable development and inter-generational equity too pre-supposes the higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between the present and future generations. Environmental ethics behind those principles were human need and exploitation, but such principles have no role to play when we are called upon to decide the fate of an endangered species or the need to protect the same irrespective of its instrumental value.

20. Anthropocentrism considers humans to be the most important factor and value in the universe and states that humans have greater intrinsic value than other species. Resultantly, any species that are of potential use to humans can be a reserve to be exploited which leads to the point of extinction of biological reserves. Further, that principle highlights human obligations towards environment arising out of instrumental, educational, scientific, cultural, recreational and aesthetic values that forests has to offer to humans. Under this approach, environment is only protected as a consequence of and to the extent needed to protect human well being. On the other hand ecocentric approach to environment stress the moral imperatives to respect intrinsic value, inter

dependence and integrity of all forms of life. Ecocentrism supports the protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth. (See Environmental Ethics, Stanford Encyclopaedia of Philosophy 2002; Revised 2008) The same book also gives a clear distinction between instrumental value and intrinsic value which reads as follows:-

"In the literature on environmental ethics the distinction between instrumental value and intrinsic value (meaning "non-instrumental value") has been of considerable importance. The former is the value of things as means to further some other ends; they are also useful as means to other ends. For instance, certain fruits have instrumental value for bats who feed on them, since feeding on the fruits is a means to survival for the bats. However, it is not widely agreed that fruits have value as ends in themselves. We can likewise think of a person who teaches others as having instrumental value for those who want to acquire knowledge. Yet, in addition to any such value, it is normally said that a person, as a person, has intrinsic value, i.e., value in his or her own right independently for his or her prospects for serving the ends of others. For another example, a certain wild plant may have instrumental value because it provides the ingredients for some medicine or as an aesthetic object for human observers. But if the plant also has some value in itself independently of its prospects for furthering some other ends such as human health or the pleasure from aesthetic experience, then the plant also has intrinsic value. Because the intrinsically valuable is that which is good as an end in itself, it is commonly agreed that something's possession of intrinsic value generates a prima facie direct moral duty on the part of moral agents to protect it or at least refrain from damaging it."

Above principle had its roots in India, much before it was thought of in the Western World. Isha-Upanishads (as early as 1500-600 B.C.) taught us the following truth:-

"The universe along with its creatures belongs to the Lord. No Creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

21. Father of the Nation Mahatma Gandhi has also taught us the same principle and all those concepts find their place in Article 51A(g) as well. The intrinsic value of the environment as we have already indicated also finds a place in various international conventions like, Convention for Conservation of Antarctic Living Resources 1980, The Protocol to Antarctic Treaty on Environmental Protection 1998, The Bern Convention on Conservation of European Wildlife and

Natural Habitats 1982, CITES, and CBD etc.

CBD in its preamble states as follows:-

"The Contracting Parties,

Conscious of the intrinsic value of biological and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere.

Affirming that the conservation of biological diversity is a common concern of humankind."

India is a signatory to CBD, which also mandates the contracting parties to develop and maintain necessary legislation for protection and regulation of threatened species and also regulate trade therein. CITES in its preamble also indicates that Fauna and Flora are irreplaceable part of the natural environment of the earth and international cooperation is essential for the protection of certain species against over exploitation and international trade.

22. CITES, to which India is a signatory, classifies species into different appendices in the order of their endangerment, and prescribes different modes of regulation in that regard.

23. Parties to the CITES are also entitled to take (a) stricter domestic measures regarding conditions of trade, taking possession or transport of specimens of species included in Appendix-I, II and III, or the complete prohibition thereof or; (b) domestic measures restricting or prohibiting trade, taking possession or transport of species not included in appendix I, II or III. As indicated earlier species listed in Appendix -- II shall include all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival and other species which must be subject to regulation in order that trade in specimens of certain species referred to earlier may be brought under effective control.

CITES and CBD highlight the following principles:-

- (a) The State is bound to initiate measures to identify threatened species.
- (b) The State is obliged to initiate measures to conserve and protect such threatened species.
- (c) The State is also required to formulate policies, legislation and appropriate laws to curb those practices (including trade) that result in extinction of species.
- (d) The state is obliged to undertake in-situ conservation of biological diversity as it is not sufficient that a species is cultivated elsewhere. It, ought to be protected in its natural habitat.

Indian sandalwood (*Santalum album Linn*) is not seen included in the species listed in Appendix-II of CITES, however red sandalwood (*Pterocarpus Santalinus*) is seen included in Appendix-II. At the same time International Union for Conservation of Nature (IUCN) which is an international organization dedicated to finding pragmatic solutions of our most pressing environment and development challenges has included *Santalum album Linn* in its Red List of threatened species as "vulnerable" and red sandalwood (*Pterocarpus Santalinus*) in the Red List as "endangered". Therefore both in CITES and in the IUCN Red List of threatened species red sandalwood is described as "threatened with extinction", "endangered". A taxon is critically endangered when the available evidence indicates that it meets with the criteria of extremely high risk of extinction. It is Endangered when it meets with the criteria of facing a very high risk of extinction. A taxon is vulnerable when it is considered to be facing a high risk of extinction. Near threatened, means a taxon is likely to qualify for a threatened category in the near future.

24. Red sandalwood is a species of *Pterocarpus* native of India seen no where in the world. It is reported that the same is found only in South India, especially in Cuddapah and Chittoor in the States of Tamil Nadu and Andhra Pradesh border which is also known as *Lal Chandan / rakta Chandan* in Hindi which is an endemic and endangered species. Red Sandalwood possesses medicinal properties viz., an anticoagulant, improves local circulation and used on traumatic wounds, aberrations and bruises. Since the trading is mostly in South India, especially in Andhra Pradesh (AP) it is stated that A.P. Forest Corporation has been appointed as an agent to Govt. of A.P. for disposal of red sandalwood available with Forest Department.

25. Red Sanders is an endemic and endangered species as already mentioned, found only in the State of A.P. A.P Government has banned the sale of Red Sanders even by private parties, the

wood is of huge demand in Japan, China and Western world and is very costly and it is included in the negative list of plant species for export purposes, implemented by the Directorate General of Foreign Trade, Ministry of Commerce, placing restrictions on international trade of Red Sanders. Large scale smuggling of Red Sanders is however reported from various quarters. In order to protect the species, a proposal was made by the State of A.P. to Government of India for its inclusion in Schedule VI of the Act which, in our view, is justified.

26. CITES as well as IUCN has acknowledged that Red Sandalwood is an endangered species. It is settled law that the provisions of the Treaties/conventions which are not contrary to Municipal laws, be deemed to have been incorporated in the domestic law. Ref. **Vellore Citizens** (Supra), **Jolly George vs. Bank of Cochin** (1980) 2 SCC 360, **Gramophone Company of India vs. Birendra Baldev Pandey** (1984) 2 SCC 534. Under the above mentioned circumstances, following the ecocentric principle, we are inclined to give a direction to the Central Government to take appropriate steps under Section 61 of the Act to include Red Sanders in Schedule-VI of the Act as requested by the State of A.P. within a period of six months from the date of this judgment. We are giving this direction, since, it is reported that nowhere in the world, this species is seen, except in India and we owe an obligation to world, to safeguard this endangered species, for posterity. Power is also vested with the Central Government to delete from the Schedule if the situation improves, and a species is later found to be not endangered.

27. Sandalwood as such we have already indicated finds no place in CITES but it is included in the Red List of IUCN as "vulnerable" and hence call for serious attention by the Central Government, considering the fact that all the sandalwood growing states have stated that it faces extinction. Section 61 of the Act empowers the Central Government to add or delete any entry to or from any schedule if it is known that it is expedient so to do. Section 5 deals with the constitution of National Board of Wildlife (NBWL) which is headed by the Prime Minister as Chairman. Section 5C deals with the functions of the NBWL which states that it shall be the duty of the National Board to promote the conservation and development of wildlife and forests by such measures as it thinks fit. Section 5C(ii)(a) states that the measures may provide for promoting policies and advising Central Government and State Governments on the ways and means of promoting wildlife conservation and effectively controlling poaching and illegal trade of wildlife and its products and also for reviving from time to time the progress in the field of wildlife conservation in the country and suggesting measures for improvement thereto. Various other powers have also been conferred on the National Board which consists of experts in the field of environment. In such circumstances rather than giving a positive direction to include sandalwood in Schedule VI we are inclined to give a direction to the

Central Government to examine the issue at length in consultation with NBWL and take a decision within a period of six months from today as to whether it is to be notified as a specific plant and be included in Schedule VI of the Act.

28. We are also inclined to give a direction to the Central government to formulate a policy for conservation of sandalwood including provision for financial reserves for such conservation and scientific research for sustainable use of biological diversity in sandalwood. Central Government would also formulate rules and regulations under Section 3 and 5 of Environmental Protection Act 1986 for effective monitoring, control and regulation of sandalwood industries and factories and that it should also formulate rules to ensure that no imported sandalwood is sold under the name of Indian sandalwood and adequate labelling to this effect be mandated for products manufactured from or of import of sandalwood. States are directed to immediately close down all unlicensed sandalwood oil factories, if functioning and take effective measures for proper supervision and control of the existing licensed sandalwood oil factories in states.

29. We are also of the view that time has also come to think of a legislation similar to the Endangered Species Act, enacted in the United States which protects both endangered species defined as those "in danger of extinction throughout all or a significant portion of their range" and "threatened species", those likely to become endangered "within a foreseeable time". The term species includes species and sub-species of fish, wildlife and plants as well as geographically distinct populations of vertebrate wildlife even though the species as a whole may not be endangered. We hope the Parliament would bestow serious attention in this regard. With the above directions, all the applications are disposed of.